

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 129 of 1976

with

SECOND APPEAL No 154 of 1975

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMARAT WD/O KANA BHAGVAN

Versus

KOLI BAI JADI KANA

Appearance:

1. First Appeal No. 129 of 1976
MR JD AJMERA for Petitioner
SERVED for Respondent No. 1
MR SK JHAVERI for Respondent No. 2
2. Second Appeal No 154 of 1975
MR JD AJMERA for Petitioner
SERVED for Respondent No. 1
MR SK JHAVERI for Respondent No. 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 10/11/97

ORAL JUDGEMENT

1. It appears that Bai Amrat, Wd/o deceased Kana Bhagwan has preferred both these appeals against the respondent-plaintiffs who instituted Spl.C.S.No.52/68 in the court of Civil Judge (SD) Bhavnagar for declaration that the land bearing S.No.114/J admeasuring 21 acre 17 gunthas at village Talaja is the joint property between her and defendants. By judgment and decree dated 14.9.71 the Civil Judge (SD) Bhavnagar decreed the suit and ordered that the defendants should give 1/2 share in S.No.114/J admeasuring 21 acres 17 gunthas at village Talaja to the plaintiff No.1 and enquiry should be made under Order 21 Rule 12 of C.P.C. for determining mesne profits of the suit land from the date of suit till the possession is delivered to the plaintiff No.1.

2. Against the very judgment and decree passed in Spl.C.S.No.52/68 decided by the Civil Judge (SD) Bhavnagar Bai Amrat filed Civil Regular Appeal No.173/71 in the Court of Asst.Judge, Bhavnagar who confirmed the decree and dismissed the appeal on 7.10.74. Bai Amrat thereupon preferred Second Appeal No.154/75 in this court stating that the same to be one against the preliminary decree which also came to be admitted by this court. The Assistant Judge, Bhavnagar by judgment and order dated 7.10.74 dismissed the appeal and confirmed the judgment passed by the Ld.Civil Judge (SD), Bhavnagar.

3. It is thus clear that against same judgment and decree two proceedings were initiated one being FA No.129/76 filed in the High Court of Gujarat and the second one being S.A.No.154/75 which was directed against Reg.Civil Appeal No.17/71.

4. Mr.S.K.Zaveri who appears for respondents in this appeal has pointed out to the court that the original appellant-Bai Amrat, the Wd/o deceased Kana Bhagwan in both these proceedings has expired as back as 30.12.1989 and that fact appears to have been brought to the notice of the Ld.counsel of the defendants on two occasions, one in 1994 and second time in March, 1997. No step is taken whatsoever by the Ld.advocate for the appellant in either the FA or the SA to bring the heirs of deceased appellant on record nor is any reason advanced as to why the heirs of the deceased appellant are not brought on record. Both these appeals have thus abated and are ordered to be dismissed as having been abated with no

order as to costs.

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